Filed 8/27/19 In re J.N. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re J.N., a Person Coming Under the Juvenile Court Law.	B291963 (Los Angeles County Super. Ct. No. 18LJJP000216)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. K.N., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Karin Borzakian, Commissioner. Affirmed.

Richard L. Knight, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Timothy M. O'Crowley, Principal Deputy County Counsel, for Plaintiff and Respondent.

K.N. (Mother) appeals from the juvenile court's dispositional order finding that her son J.N. came within the jurisdiction of the court under Welfare and Institutions Code section 300, subdivisions (b)(1) and (j),[1] ordering him removed from her custody, and requiring monitored visitation. She claims insufficient evidence supports the finding and removal order, and the court abused its discretion by refusing her request for unmonitored visits. We reject the claims and affirm.

BACKGROUND

I. Detention

On March 16, 2018, the Department of Children and Family Services (DCFS) received a referral alleging Mother was neglecting her newborn child, J.N. The reporting party stated that Mother had a history of drug abuse, had an open dependency case as to J.N.'s older sibling, six-year-old Charles H., and had not informed DCFS that she had given birth to J.N.

DCFS noted there had been 2012, 2013, and 2014 allegations that Mother was neglecting Charles; these allegations

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[1] Unless otherwise indicated, section references are to the Welfare and Institutions Code.

were unfounded or inconclusive.[2] However, in August 2016, DCFS received another referral alleging Mother neglected Charles. The reporting party indicated that in July 2016, Mother asked Penny N., the maternal grandmother, to take Charles for a while; Charles was dirty, hungry, and covered with bug bites. Mother was supposed to pick up Charles later but failed to do so. Charles said he did not want to go home with Mother. Mother refused to speak with a children's social worker (CSW) or give one permission to enter the home. It was alleged Mother lacked protective capacity or an interest in ensuring Charles's needs were met. The allegations were deemed substantiated and the court ordered Charles removed from his parents' custody and placed with Penny N.

In July 2017, police arrested Mother for driving under the influence causing bodily injury; due to insufficient evidence, no prosecution occurred. In September 2017, police again arrested Mother for driving under the influence.

On December 27, 2017, Mother completed her intake at the "New Start for Moms" program. New Start's drug program required completion of 52 sessions. As of February 28, 2018, Mother had completed only 19. A New Start representative referred Mother to a support group and advised her to take it seriously and obtain a sponsor. Mother indicated she did not

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[2] In 2012, it was reported there was an odor of alcohol emanating from Mother, and she appeared to be drunk. In 2013, there was a report that Mother and Charles's father used drugs in Charles's presence. In 2014, it was reported that Mother neglected and emotionally abused Charles, and there was a domestic violence incident between Mother and Charles's father, in which Mother received black eyes and bruises on her nose.

need them. She completed certain programs; she also submitted to drug tests with negative results. However, DCFS was concerned that Mother "has chosen not to address domestic violence and substance abuse" issues.

On March 20, 2018, the CSW spoke with the CSW assigned to Charles's case. She reported that Mother was allowed monitored visits with Charles. However, Penny N. reportedly had allowed Mother to stay overnight at her home, where Charles had been placed. The CSW assigned to Charles's case expressed concern that Mother had not reported J.N.'s birth to DCFS; she had not even known Mother was pregnant until the court contacted her on March 16, 2018.

The CSW spoke with Mother on March 20, 2018; Mother stated she had been living for over a year with Maureen Cyr, Penny's former girlfriend (except for nine days discussed *post*). Mother said that in July 2017, she used methamphetamine and "received a DUI." In September 2017, Mother last used methamphetamine and was arrested for driving under the influence. During this period of drug use, she was uncertain what she wanted to do and whether Charles would be better off with Penny N. Mother was diagnosed as a "binge user"; she would be "gone" for a month at a time. Mother also had been diagnosed with posttraumatic stress disorder (PTSD).

J.N. was born one month premature. Mother claimed she had tried to notify DCFS about J.N.'s birth, but she could not remember who her current CSW was, and she could not get in touch with any of the CSWs she had dealt with previously. Mother also claimed she did not know she was supposed to notify DCFS. J.N.'s father had no contact with Mother or J.N. Mother

did not know J.N.'s father's name; she had been "so high" that she did not remember.

Mother told the CSW she did not use any illegal substances after she learned she was pregnant with J.N. Mother submitted to drug tests overseen by New Start; after she learned she was pregnant she did not "test[] positive." Mother's last drug test was on March 5, 2018. Mother explained she belatedly had complied with court orders because she did not know what she wanted and had not been ready to "grow up"; she had changed since then. The CSW asked what Mother's plan was in the event of a relapse; Mother said she did not want to think about it but was just going to keep attending classes and "stay[] on the right path." However, Mother conceded she would contact Penny N. to watch J.N. "should that situation occur." Mother added that Charles's father committed domestic violence on her, but he was imprisoned. She was not involved in domestic violence after his imprisonment, and she currently was not involved in a romantic relationship.

On March 23, 2018, the CSW called Mother after Mother reported that she and J.N. were at the hospital because J.N. was ill. The CSW explained that DCFS was trying to establish a safety plan for J.N. Mother replied, "I don't want him to leave my sight. The last time I left him with [Penny N.] for a day was really hard for me." Mother stated: "I've done everything I'm supposed to be doing. That's my baby. Why are you guys taking my baby away from me[?]" The CSW tried to create a safety plan with Mother, but Mother refused to approve it. Mother said she did not understand why a safety plan was necessary if she was complying with all court orders.

Thereafter the supervising CSW spoke to Mother by phone in an attempt to negotiate a safety plan due to Mother's resistance. Mother was "not open" to a safety plan. Mother asked why it was not enough that she had been continually watching J.N. during the last nine days that she had been staying with Penny N. The supervising CSW told Mother that the court had ordered monitored visits with Charles[3] and had placed him in Penny N.'s custody; therefore, Mother was violating court orders by staying with Penny N. Mother responded that she did not understand why she would only be able to have monitored visits with J.N. The supervising CSW indicated the CSW would follow up with her regarding detention.

The CSW believed detention was necessary: "Based upon my [two] years of experience as a [CSW] investigating child abuse referrals, I believe the conduct of [Mother] endangers the physical and emotional well-being of [J.N.] such that [he] is at risk of suffering from neglect, emotional or physical harm. Such conduct includes but is not limited to[:] [Mother] has a history of substance abuse and domestic violence, her son Charles has been detained from her care for more than a year and she only recently began services approximately [two] months ago. As a result, [M]other is partially compliant with the court ordered case plan. Mother chose to disregard court ordered monitored visits with child Charles when she was staying in the home of [Penny N.] following [J.N.'s] birth for approximately [nine] days. Upon reviewing [M]other's criminal history, it appears [she] has two recent DUI's . . . . [M]other indicated she last used

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[3] As discussed *post*, on November 21, 2016, the court in Charles's proceeding ordered monitored visitation for Mother.

methamphetamines in September 2017 while she was pregnant with . . . J.N. Additionally, [M]other reported she is diagnosed as a binge drug user and [she] reported [J.N.] was conceived during a drug related binge. [DCFS] has concern that although [M]other is reported to be enrolled in services, [her] participation and sobriety is very recent and [she] has not had significant time to benefit from the services and address the issues that initially brought the family to [DCFS's] attention. Of additional concern, [J.N.] is young and of a tender age which requires constant care and supervision . . . ." The CSW believed that reasonable efforts, i.e., counseling, case management, and parent training, had been made to prevent J.N.'s removal, but they proved ineffective.

On April 2, 2018, the juvenile court found a prima facie case for detention. It ordered J.N. detained in Penny N.'s home, and it granted Mother monitored visitation.

II. The Section 300 Petition

DCFS filed a section 300 petition alleging that J.N. came within the jurisdiction of the juvenile court under section 300, subdivisions (b)(1) and (j). In count b-1, the petition alleged that Mother "has a history of illicit drug abuse and is a [recent] abuser of methamphetamine, which renders [Mother] incapable of providing the child with regular care and supervision. [Mother] abused methamphetamine during [her] pregnancy with the child. The child is of such a young age as to require constant care and supervision and [Mother's] illicit drug use interferes with providing regular care and supervision of the child. The child's sibling, [Charles H.], is [currently a] dependent of the Juvenile Court due to [Mother's] substance abuse. [Mother's] illicit drug abuse endangers the child's physical health and safety, creates a

detrimental home environment and places the child at risk of serious physical harm and damage."[4]

In count b-2, the petition alleged "[Mother] suffers from mental and emotional problems including a diagnosis of (PTSD), which renders [Mother] incapable of providing the child with regular care and supervision. [Mother]'s mental and emotional problems endanger the [child's] physical health and safety and place[s] the [child] at risk of serious physical harm, damage, danger and failure to protect."[5]

The count j-1 allegations duplicated those in count b-1.[6]

III. Jurisdiction and Disposition

In the May 14, 2018 jurisdiction/disposition report, DCFS noted that on April 2, the court found that J.N.'s father was unknown. On April 19, the CSW asked Mother who J.N.'s father was. Mother replied there were three possible fathers; she was using drugs at the time she was involved with them.

DCFS noted Mother's September 15, 2017 arrest for driving under the influence; arraignment was scheduled for May 17, 2018. On April 2, 2018, the date of the detention hearing, Mother

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[4] As discussed *post*, at the conclusion of the June 11, 2018 adjudication hearing, the court amended the count b-1 allegations to conform to proof, i.e., the word "recent" replaced the word "current."

[5] The court amended the count b-2 allegations to conform to proof, i.e., the words "child's" and "child" in brackets above replaced the words "children's" and "children," respectively.

[6] The court amended the count j-1 allegations to conform to proof, i.e., the word "recent" in brackets in those allegations replaced the word "current."

submitted to a DCFS test showing she had a blood alcohol level of .02 percent and she was negative for glucose.

The CSW reported that Mother denied the allegations in counts b-1 and j-1. Mother maintained: "I do have a drug history but my past case was not about that. It was about domestic violence and my drug history was added later." No charges were filed following her July 2017 arrest for driving under the influence. She denied using methamphetamine in September 2017. She said she found out she was pregnant in September 2017; she did not subsequently use methamphetamine. She added that Charles's case history presented no risk to J.N.

Mother acknowledged she had a PTSD diagnosis but claimed she was in therapy and was stable. Mother said she was "assessed for medication and they found that I didn't need it." Mother admitted her inability to cope with her emotions triggered her drug use. The CSW stated there was "no evidence that [Mother's PTSD] diagnosis presents a direct safety threat to [J.N.]"

On November 21, 2016, a juvenile court ordered a case plan for Mother and Charles. The plan required Mother's completion of drug and alcohol, parenting, domestic violence, and substance abuse programs. The plan also required monitored visitation.

The CSW noted the multiple services Mother received in connection with Charles's case, and Mother's "minimal progress" in that case. The CSW encouraged Mother to continue addressing her issues but stated it was DCFS's assessment that the "risk to [J.N.] is high." Mother had not demonstrated she could remain sober, she seemed to be in denial with respect to her alcohol abuse, and DCFS was concerned about her April 2018 positive test for alcohol.

On May 14, 2018, DCFS filed a last minute information for the court reflecting that it had received a progress letter from New Start. The letter indicated "[Mother] has good attendance and has tested clean nine times."

Mother submitted a certificate of achievement dated April 27, 2018, from the Ventura County Health Care Agency reflecting Mother's successful completion of a level one parenting class. She also submitted a letter dated April 27, 2018, from Ventura County Behavioral Health reflecting Mother's participation in New Start. The letter stated that through her participation in the program, Mother had "become dependable and reliable and accountable." Mother understood the detriment caused by her addiction and wanted to change.

Mother testified at the jurisdiction/disposition hearing that she received services from New Start in the areas of parenting, recovery therapy, domestic violence counseling, and mental health therapy. Mother gave conflicting testimony on whether her therapist told her that she needed medication. Mother said she did not "take any alcohol" on April 2, 2018. She last used methamphetamine on July 26, 2017.

During cross-examination, Mother acknowledged she had a history of drug use before 2017. Mother had not completed any court-ordered programs in Charles's case. In February 2017, she was in a drug program at Kaiser; she was "off and on" in that program and did not complete it. She began participating in New Start services in December 2017. During intake at New Start, a counselor told Mother that she needed to be diagnosed with something in order to see the counselor, so she diagnosed Mother with PTSD; Mother testified, "It's not that I have it." Mother

admitted she did not obtain a court order authorizing her to stay with Penny N., although a CSW had told Mother she needed one.

Mother also acknowledged that her client plan from Ventura County Behavioral Health indicated that she possessed a social impairment due to overwhelming symptoms of anxiety, depression, and trauma. She had not addressed these in New Start. Mother did not believe she had such an impairment, however. In January 2018, she had experienced irritability, sadness, anger, and guilt, but she no longer experienced these.

On June 11, 2018, following the hearing, the juvenile court sustained the allegations of the petition. The court noted Mother's history of substance abuse and domestic violence. The court observed Charles's removal from Mother's custody had continued for more than a year; the court in that case established her case plan in November 2016. Mother had continued to use drugs and alcohol and had twice been arrested for driving under the influence. Mother disregarded the court's order concerning monitored visits with Charles when she stayed with Penny N. for nine days after J.N.'s birth.

The court was "concerned that although Mother is reported to be enrolled in services, Mother's participation in sobriety is very recent. . . . Mother has not had significant time to benefit from services and address issues that initially brought the family to [DCFS's] attention regarding [J.N.] Of additional concern, [J.N.] is very young and is of tender age and requires constant care and supervision."

The court commended Mother for her recent efforts and the progress she was making. It noted that the exhibits she submitted "show[ed] that she has goals to keep and meet for at least a year." However, based on her history and the fact J.N.

was a newborn, the court found DCFS "met its burden of jurisdiction as well as to suitably place the child at this time." The court declared J.N. to be a dependent child of the court and removed him from Mother's custody.

Regarding removal, the court stated: "The court finds by clear and convincing evidence pursuant to . . . [section] 361[, subdivision] (c) that there is a substantial danger[,] if the child were returned home[,] to the physical health, safety, protection, or physical and emotional well-being of the child. [¶] And there are no reasonable means by which the child's physical health can be protected without removing the child from [Mother's] physical custody. [¶] . . . [¶] Reasonable efforts were made to prevent and eliminate the need for the child's removal from the home of the custodial parent."

With respect to visitation, Penny N. requested that the court allow it to be unmonitored in Penny N.'s home, so that Mother could watch the children while Penny N. went to work. DCFS requested monitored visitation.

The court observed: "At this time, it appears Mother has six months of negative drug tests. I would like to see some additional testing from Mother before I grant unmonitored visitation for the child." While the court ruled that visitation was to be monitored even in Penny N.'s home, it gave DCFS discretion to liberalize visitation to unmonitored.

The court granted Mother family reunification services and ordered her to enroll in a full drug and alcohol program with aftercare and random testing; a 12-step program; and individual counseling to address trauma, triggers, and relapse prevention. The court also granted her transportation, housing, and childcare assistance.

DISCUSSION

I. Substantial Evidence Supports the Jurisdictional Findings and Dispositional Order

Mother makes related claims that there is insufficient evidence supporting the juvenile court's true findings as to the section 300, subdivisions (b)(1) and (j) allegations and the court's dispositional order removing J.N. from her custody. We reject the claims.

A. *Standard of Review*

" 'In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." [Citation.] "We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] ' "[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate]." ' [Citation.]" [Citation.]' [Citation.]" (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

B. *Jurisdiction*

The instant petition alleged J.N. came within subdivisions (b)(1) and (j) of section 300. Where "jurisdiction [is] based on the inability of the parent . . . to provide regular care for the child due to the parent's . . . substance abuse" within the meaning of section 300, subdivision (b)(1) (*In re Drake M.* (2012) 211 Cal.App.4th 754, 764), "[t]he trial court is in the best position to determine the degree to which a child is at risk based on an assessment of all the relevant factors in each case." (*Id.* at p. 766.) Cases finding a substantial physical danger to a child include those "involv[ing] children of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety." (*Id.* at p. 767; accord, *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384.) In such cases, a "finding of substance abuse is prima facie evidence of the inability of a parent . . . to provide regular care resulting in a substantial risk of physical harm." (*In re Drake M.*, *supra*, at p. 767.)

" '[S]ubdivision (j) was intended to expand the grounds for the exercise of jurisdiction as to children whose sibling has been abused or neglected as defined in section 300, subdivision[s] (a), (b), (d), (e), or (i). . . .' [Citation.]" (*In re I.J.*, *supra*, 56 Cal.4th at p. 774.) "Unlike the other subdivisions, subdivision (j) includes a list of factors for the court to consider: 'The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.' (§ 300, subd. (j).)" (*Ibid.*)

"[S]ection 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction. The subdivisions at issue here require only *a* '*substantial risk*' that the child will be abused or neglected. The legislatively declared purpose of these provisions 'is to provide *maximum* safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children *who are at risk of that harm*.' (§ 300.2 . . . .)" (*In re I.J.*, *supra*, 56 Cal.4th at p. 773, first and second italics added.)

"[S]ection 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing." (*In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1383.) "The court may consider past events in deciding whether a child currently needs the court's protection. [Citation.] A parent's ' "[p]ast conduct may be probative of current conditions" if there is reason to believe that the conduct will continue.' [Citations.] [¶] In addition, the Legislature has declared, 'The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment.' (§ 300.2.)" (*Id.* at pp. 1384-1385.)

DCFS has the burden of proving by a preponderance of the evidence that a child is a dependent of the court under section 300. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) "Only one jurisdictional finding is required for the dependency court to

assert jurisdiction over a child." (*In re Mia Z.* (2016) 246 Cal.App.4th 883, 894.)

Here, there was substantial evidence of Mother's history of substance abuse. Mother concedes in her opening brief that DCFS presented evidence that during the year preceding the instant petition, she was arrested twice for driving under the influence. The trial court was entitled to conclude her substance abuse was "spilling over into areas that will pose a substantial risk of physical harm" to J.N., and that there was "a nexus between Mother's substance abuse and a substantial risk of future harm to [J.N.]" (*In re L.W.* (2019) 32 Cal.App.5th 840, 850.)

Moreover, Mother had only recently begun participating in the court-ordered substance abuse program and failed to complete even her New Start drug program. She had not tested through DCFS. She failed to comply with some court orders, belatedly complied with others, and resisted the creation of a safety plan for J.N.

Mother concedes that she had "mental illness, PTSD." In her testimony, however, she suggested that New Start falsely diagnosed her with PTSD. She acknowledged other mental health problems which led to her drug abuse and which she had not yet addressed, but she denied the social impairment reflected in her case plan.

Mother's history of substance abuse and mental illness, and the fact she had not yet adequately addressed those problems, constitute substantial evidence that J.N. was at substantial risk of serious physical harm or illness due to Mother's inability to adequately supervise or protect him. (§ 300, subd. (b); *In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1384; *In re Drake M.*,

supra, 211 Cal.App.4th at p. 764.) These problems also led to the removal of Charles from her custody. For this reason, there is substantial evidence to support the exercise of jurisdiction under subdivision (j) of section 300 as well.

C. *Disposition*

In order to remove a child from the physical custody of his or her parents, a "juvenile court must find by clear and convincing evidence that '[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor . . .' 'and there are no reasonable means by which the minor's physical health can be protected . . . .' " (*In re A.E.* (2014) 228 Cal.App.4th 820, 825.) " 'Clear and convincing evidence requires a high probability, such that the evidence is so clear as to leave no substantial doubt.' [Citation.]" (*Ibid.*) Moreover, "jurisdictional findings are prima facie evidence the child cannot safely remain in the home. (§ 361, subd. (c)(1).) The parent need not be dangerous and the child need not have been actually harmed before removal is appropriate. [Citations.]" (*Id.* at pp. 825-826.)

In light of Mother's history of substance abuse and two recent arrests for driving under the influence, we conclude sufficient evidence supported the juvenile court's dispositional order removing J.N. from Mother's custody. None of Mother's arguments compels a contrary conclusion.[7]

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[7] We have reached our sufficiency conclusions without relying on the unfounded or unsubstantiated 2012 through 2014 allegations. Additionally, Mother argues the trial court erroneously failed to "make a determination as to whether reasonable efforts were made to prevent or to eliminate the need

II. The Juvenile Court Properly Ordered that Mother's Visits Be Monitored

Mother claims the juvenile court abused its discretion by "den[ying] . . . without explanation" Mother's request that her visits with J.N. be unmonitored. We disagree.

We review a visitation order for abuse of discretion. (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1284.) Under that standard, we uphold a juvenile court's exercise of discretion unless it exceeds the bounds of reason. (*In re R.D.* (2008) 163 Cal.App.4th 679, 685.)

The juvenile court did not deny without explanation Mother's request that her visits with J.N. be unmonitored. To the contrary, the juvenile court provided a careful and thoughtful explanation for its denial of the request: Mother's history of substance abuse, her very recent participation in a program to address that substance abuse, and the short period of time in

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for removal of the minor from his . . . home" and erroneously failed to "state the facts on which the decision to remove the minor is based." (§ 361, subd. (e).) However, it is clear that the trial court properly intended its extensive recitation of facts during its ruling to support the jurisdictional finding and the removal order that immediately followed. The court also expressly made the above mentioned "determination." Further, the court expressly stated that there were no reasonable means by which J.N.'s physical health could be protected without removing him from Mother's physical custody. Clear and convincing evidence supported the disposition order. Any erroneous failure to make required findings was harmless. (Cf. *In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136-1137, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218-1219.)

which she tested negative for drugs. We perceive no abuse of discretion. (See *In re R.R.*, *supra*, 187 Cal.App.4th at p. 1284.)

DISPOSITION

The order is affirmed.
NOT TO BE PUBLISHED

JOHNSON, Acting P. J.

We concur:

BENDIX, J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.